

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARON DOUGLAS CASTLIN,

Plaintiff,

v.

RICHARD J. KIRKLAND, JEANNE
S. WOODFORD, T. GAMBOA, C.
CULTER, S. C. WHEELER, M. D.
CASTELLAW, C. POLK, R. FLOTO,
N. GRANNIS,

Defendants.

No. C 06-0050 JSW (PR)

ORDER REVIEWING
COMPLAINT AND REMANDING
CASE TO DEL NORTE COUNTY
SUPERIOR COURT

(Docket No. 2)

On October 5, 2005, Plaintiff, an inmate at Pelican Bay State Prison, filed this *pro se* civil rights complaint in Del Norte County Superior Court. Plaintiff's complaint alleges property claims arising under state and federal law. On January 5, 2006, Defendants removed the case to federal court pursuant to 28 U.S.C. § 1446. Contemporaneous to filing the notice of removal, Defendants have filed a motion seeking screening of this complaint under 42 U.S.C. § 1997e(g) (docket no. 2). That motion is now GRANTED (docket no. 2).

The gravamen of the complaint is that while Plaintiff was in the Security Housing Unit at Pelican Bay, Defendants disposed of Plaintiff's "manuscript-artwork, poems, writings, etc." without providing Plaintiff with notice and an opportunity to mail home, donate or dispose of his property, as required under California state regulations. Plaintiff contends this failure to provide him with notice and a process by which to dispose or remove his property violated his rights under state law and under the First, Fifth, Sixth

1 and Fourteenth Amendments to the Federal Constitution. Plaintiff seeks compensation for
2 the loss of his property.

3 **DISCUSSION**

4 A. Standard of Review

5 Federal courts must engage in a preliminary screening of cases in which prisoners
6 seek redress from a governmental entity or officer or employee of a governmental entity.
7 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and
8 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief
9 may be granted, or seek monetary relief from a defendant who is immune from such
10 relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v.*
11 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a violation of a right secured by the Constitution or laws of the United
14 States was violated, and (2) that the alleged deprivation was committed by a person acting
15 under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 B. Claims

17 In his ten page complaint, Plaintiff asserts a claims against the named Defendants
18 for failing to provide him with the required notice and opportunity to mail or donate his
19 manuscript before disposing of it as required by state regulations, thereby resulting in the
20 permanent loss of his property. Although Plaintiff states in the complaint that his claims
21 arise under the First, Fifth, Sixth, and Fourteenth Amendments, Plaintiff's complaint fails
22 to state a federal claim for relief under those provisions of the Constitution.

23 Ordinarily, due process of law requires notice and an opportunity for some kind of
24 hearing prior to the deprivation of a significant property interest. *See Memphis Light, Gas*
25 *& Water Div. v. Craft*, 436 U.S. 1, 19 (1978). However, neither the negligent nor
26 intentional deprivation of property states a due process claim under § 1983 if the
27 deprivation was random and unauthorized. *See Parratt v. Taylor*, 451 U.S. 527, 535-44
28 (1981) (state employee negligently lost prisoner's hobby kit), *overruled in part on other*

1 grounds, *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S.
2 517, 533 (1984) (intentional destruction of inmate's property). The availability of an
3 adequate state post-deprivation remedy, e.g., a state tort action, precludes relief because it
4 provides sufficient procedural due process. See *Zinermon v. Burch*, 494 U.S. 113, 128
5 (1990) (where state cannot foresee, and therefore provide meaningful hearing prior to,
6 deprivation statutory provision for post-deprivation hearing or common law tort remedy
7 for erroneous deprivation satisfies due process); *King v. Massarweh*, 782 F.2d 825, 826
8 (9th Cir. 1986) (same). California law provides such an adequate post-deprivation
9 remedy. See *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal. Gov't
10 Code §§ 810-895). Therefore, where a prison official acts in a random and unauthorized
11 manner to deny an inmate his property (that is, he fails to act in accord with established
12 prison procedures), the claim must be pursued in state, not federal, court. As Plaintiff
13 here alleges that prison officials failed to provide him with the required process before
14 depriving him of his property, Plaintiff fails to state a due process claim.

15 Moreover, Plaintiff's complaint fails to otherwise state a claim for relief under the
16 Federal Constitution. Although Plaintiff's complaint states that the action arises under
17 the First, Fifth, Sixth and Fourteenth Amendments, there are no allegations in the
18 complaint which state a claim under those provisions of the Constitution, other than the
19 due process claim set forth above. The mere fact that the deprivation of property suffered
20 by Plaintiff was of his written manuscript does not suffice to state a claim under the First
21 Amendment; nor does Plaintiff make any allegations that appear intended to state a claim
22 under that Amendment. Moreover, there is nothing in the complaint that appear to refer
23 to a claim under the Sixth Amendment, as the allegations do not relate to provision of
24 counsel in a criminal proceeding. Similarly, there is nothing in the complaint that states a
25 claim under the Fifth Amendment, unless Plaintiff was alluding to the Takings Clause of
26 the Fifth Amendment. However, Plaintiff does not allege in his ten page complaint either
27 that the property was "taken" by the state, or that the manuscript was taken for public use.
28 Rather, Plaintiff alleges that the prison disposed of his manuscript, which does not state a

1 claim under the Fifth Amendment. As such, upon this Court's review, Plaintiff's
2 complaint fails to state a claim for relief under federal law.

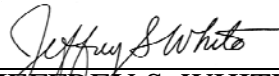
3 C. Jurisdiction

4 As a general matter, defendants may remove to the appropriate federal district
5 court "any civil action brought in a State court of which the district courts of the United
6 States have original jurisdiction." *Chicago v. Int'l College of Surgeons*, 522 U.S. 156,
7 163 (1997) (quoting 28 U.S.C. § 1441(a)). The propriety of removal thus depends on
8 whether the case originally could have been filed in federal court. *See id.* Under 28
9 U.S.C. § 1331, the district courts have original jurisdiction over cases "arising under the
10 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Once the case is
11 removed, the district court has original jurisdiction over the claims arising under federal
12 law, and may exercise supplemental jurisdiction over the accompanying state law claims
13 so long as those claims constitute "other claims that . . . form part of the same case or
14 controversy." *Id.* at 165 (quoting 28 U.S.C. § 1367(a)). However, absent a federal basis
15 for jurisdiction over some claims, removal of the case to federal court is improper.

16 In this case, where Defendants have removed a case that fails to state a proper
17 claim for relief under federal law, federal jurisdiction is now lacking. As such, the Clerk
18 of Court shall forthwith REMAND this case to the Superior Court of the State of
19 California in and for the County of Del Norte for further proceedings.

20 IT IS SO ORDERED.

21 DATED: May 17, 2006

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JEFFREY S. WHITE
United States District Judge
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